

**BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Petition for Early
Penalty Relief of:

MARK STEVEN KOSINS, M.D.

File No. 26-2010-207088

Physician's and Surgeon's
Certificate No. A25406

Petitioner.

DECISION

The Proposed Decision of Alan R. Alvord, Administrative Law Judge, dated May 17, 2011, in San Diego, is attached hereto. Said decision is hereby amended, pursuant to Government Code Section 11517 (c)(2)(c) to correct technical or minor changes that does not affect the factual or legal basis of the proposed decision. The proposed decision is amended as follows:

1. Page 1, Case No. 04-2006-176224 is listed incorrectly and should be reflected as Case No. "26-2010-207088."

The Proposed Decision as amended is hereby accepted and adopted as the Decision and Order by the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on July 13, 2011.

DATED June 13, 2011.

MEDICAL BOARD OF CALIFORNIA

By: Shelton Duruisseau
Shelton Duruisseau, Ph.D., Chair
Panel A

BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Petition for Early Penalty Relief of: MARK STEVEN KOSINS, M.D., Physician's and Surgeon's Certificate No. A 25406 <div style="text-align: right;">Petitioner.</div>	Case No. 04-2006-176224 OAH No. 2011030249
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PROPOSED DECISION

Alan R. Alvord, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter April 20, 2011 in San Diego, California.

Samuel K. Hammond, Deputy Attorney General, Office of the Attorney General, State of California, represented the people of the State of California.

Petitioner Mark Steven Kosins, M.D. was self-represented.

The matter was submitted on April 20, 2011.

FACTUAL FINDINGS

1. On May 10, 2010, petitioner signed and subsequently submitted a petition for penalty relief. On April 20, 2011, the administrative record was opened, documentary evidence and testimony received, the record was closed and the matter was submitted.

Underlying Disciplinary Case

2. On July 10, 1973, the board issued Physician and Surgeon's certificate no. A-25406 to Mark S. Kosins, M.D.

3. On November 13, 2007, Barbara Johnston, Executive Director of the Medical Board of California, Department of Consumer Affairs, filed an accusation against Mark Steven Kosins, M.D. (Kosins or petitioner). The accusation alleged Kosins committed gross negligence, repeated negligent acts, incompetence and general unprofessional conduct arising out of his psychiatric treatment of patient B.D. in 2005.

The circumstances of that underlying case were that B.D. was a severely depressed adult male with hypertension. Kosins treated B.D. with an anti-depressant medication. Kosins failed to take into account that B.D. was also taking another medication that had a potential to interact with the anti-depressant. B.D. became severely ill from a reaction to the two medications and was hospitalized.

4. On April 22, 2009, the board adopted a decision and order based on Kosins' stipulated settlement. Among other terms and conditions, Kosins agreed to be on probation for 35 months, to take a prescribing course, a medical record keeping course and a clinical training program. He also agreed to be prohibited from supervising physician assistants and to submit quarterly reports.

Kosins' probation was effective May 22, 2009 and will expire on its own terms in April 2012.

Prior Discipline

5. On November 12, 1985, a five-day disciplinary hearing was conducted regarding an accusation filed by the board. That hearing involved allegations of general unprofessional conduct against Kosins.

It was found that, in May 1981, Kosins became aware in his professional capacity that Dr. Allan Hess (Hess), a clinical psychologist over whom Kosins exercised some business control, was engaging in bizarre conduct with three teenage male patients. Hess was accused of having a child remove his shirt, rubbing a child's bare shoulders and having a child sit on his lap during therapy. It was found that Kosins knew about this conduct and failed to report it. It was found that Kosins' knowledge of Hess' conduct should have raised the reasonable suspicion that a child abuse investigation was warranted.

In a decision that became effective February 28, 1986, Kosins was suspended for 120 days, with the suspension stayed and Kosins was placed on three years' probation.

6. On May 19, 1987, Kosins filed a petition for the termination of his probation. On September 10, 1987, Kosins appeared before a panel of the Medical Quality Review Committee in a hearing on his petition for termination of probation.

In a decision that became effective October 8, 1987, Kosins' three-year probation was terminated. He served just over 19 months of his three-year probation.

Mark Steven Kosins

7. Mark Steven Kosins graduated from the University of California at Irvine Medical School in 1972. He completed an internship and residency in psychiatry through UC Irvine at Orange County Medical Center. He became a clinical professor of psychiatry at that university, and also has taught at Western University of Health Sciences, College of Osteopathic Medicine of the Pacific. He has also taught physician assistant students at Charles Drew University. He became certified by the American Board of Psychiatry and Neurology in 1993.

He opened a private practice in Rosemead, California in 1975 and enjoyed early success doing hospital work and consultations. In 1981, he opened a crisis evaluation center providing free evaluations.

Kosins' Testimony About Prior Disciplinary Matters

8. In 1981, Kosins was in practice with a child psychologist, Alan Hess, Ph.D. Dr. Hess sublet space in Kosins' office. Dr. Hess gave a shower to a male child patient he was treating. The child told his mother, who told the child's pediatrician, who called Kosins. At that time, the mandatory reporting laws for child abuse were new. Kosins did not think, under the circumstances, that he had a duty to report the incident, so he did not report it. As a result, he was disciplined.

9. Kosins was married in 1976. His wife passed away in 2010 after a long illness. In 2005, at the same time he was treating patient B.D., Kosins' wife was in the hospital. Kosins was staying in a hotel near the hospital. He got a call from B.D.'s wife, who was desperate because B.D. was severely depressed. B.D. also had hypertension. Kosins prescribed Effexor¹ for B.D. Kosins forgot about the potential drug interaction between the SSRI class of drug and other medications he had prescribed for B.D. for depression and hypertension. The next day, B.D. was hospitalized due to a reaction to the combination of drugs. B.D.'s condition was very severe. Fortunately, he pulled through the crisis and did not suffer any long term health consequences.

B.D. sued Kosins. The lawsuit was settled out of court. The board investigators reviewed Kosins' medical records and included an allegation of inadequate charting in the accusation.

10. Kosins offers the circumstances surrounding his wife's illness at the time of the incident with B.D. as an explanation, but not an excuse, for his medical error. He realizes he made a critical medical error that nearly killed a patient and he takes responsibility for the consequences of his error.

¹ Effexor is the brand name for venlafaxine, an antidepressant. This medication is in a class of drugs called selective serotonin reuptake inhibitors (SSRI).

Kosins voluntarily enrolled in and completed the University of California, San Diego PACE program's prescribing and medical record keeping courses before any legal claims or charges were made and before he consulted with an attorney. He has also completed the PACE clinical training program and many continuing medical education courses. He worked with a psychologist shortly after the incident with B.D. to examine his own approach to treatment of patients. He has learned from his mistake and has endeavored to be a better physician by changing his charting methods, double checking possible drug interactions.

Other Rehabilitation Evidence

11. Kosins presented letters of reference from physicians who describe him as a caring and competent practitioner. The letters supplement and explain Kosins' own testimony about how he has used the knowledge and resources of other professionals to help him learn and grow after his medical error.

Kosins also volunteers his time one day a month to provide psychiatric consultations and medication management for between 12 and 20 children in foster care. He also volunteers to provide psychiatric consulting in a women's shelter.

Evaluation

12. Kosins has been a model probationary physician following a severe medical error. He has, however, done much more than simply complete all the terms of his probation. He has accepted and taken responsibility for the consequences of his error. He has made changes in his practice and in his life and has learned a great deal as a result of this serious error. He has given back to his community.

Kosins has served two years of a 35-month probation. He has learned from the medical error that formed the basis for discipline, received training, made changes and is unlikely to commit future prescribing errors. There is no evidence of any subsequent acts or crimes and he has presented substantial evidence of rehabilitation.

LEGAL CONCLUSIONS

1. Government Code section 11522 authorizes a person whose license has been disciplined to petition for reinstatement or reduction of the penalty. Business and Professions code section 2307 authorizes a physician whose certificate has been disciplined to petition for reinstatement.

2. In a proceeding to restore a revoked license, the burden rests on the petitioner to prove that he has rehabilitated himself and is entitled to have his license restored. (*Flanzer v. Board of Dental Examiners* (1990) 220 Cal.App.3d 1392, 1398.) An individual seeking reinstatement must present strong proof of rehabilitation sufficient to overcome the former adverse determination. The standard of proof is clear and convincing evidence.

(*Housman v. Board of Medical Examiners* (1948) 84 Cal.App.2d 308, 315-316; *In re Menna* (1995) 11 Cal.4th 975, 986.)

3. Public protection is the highest priority for the Medical Board and the administrative law judges who consider disciplinary cases. (Bus. & Prof. Code, § 2229). The purpose of professional license discipline is not to punish the individual, but to protect the public. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.)

4. California Code of Regulations, title 16, section 1360.2 provides:

When considering a petition for reinstatement of a license, certificate or permit holder pursuant to the provisions of Section 11522 of the Government Code, the division or panel shall evaluate evidence of rehabilitation submitted by the petitioner considering the following criteria:

(a) The nature and severity of the act(s) or crime(s) under consideration as grounds for denial.

(b) Evidence of any act(s) or crime(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for denial which also could be considered as grounds for denial under Section 480.

(c) The time that has elapsed since commission of the act(s) or crime(s) referred to in subsections (a) or (b).

(d) In the case of a suspension or revocation based upon the conviction of a crime, the criteria set forth in Section 1360.1, subsections (b), (d) and (e).

(e) Evidence, if any, of rehabilitation submitted by the applicant.

5. Rehabilitation is a “state of mind.” The law looks with favor upon rewarding with the opportunity to serve, one who has achieved “reformation and regeneration.” (*Hightower v. State Bar* (1983) 34 Cal.3d 150, 157.) Fully acknowledging the wrongfulness of past actions is an essential step towards rehabilitation. (*Seide v. Committee of Bar Examiners* (1989) 49 Cal.3d 933, 940.) Mere remorse does not demonstrate rehabilitation. A truer indication of rehabilitation is presented when an applicant for readmission to a professional practice can demonstrate by sustained conduct over an extended period of time that he or she is once again fit to practice. (*In re Menna* (1995) 11 Cal.4th 975, 991.)

6. Cases authorizing reinstatement to a professional practice on the basis of rehabilitation commonly involve a substantial period of exemplary conduct following the applicant's misdeeds. The more serious the misconduct and the bad character evidence, the stronger the applicant's showing of rehabilitation must be. In determining whether to grant an application, the commonsense notion is rehabilitation cannot be determined separate and apart from the offenses from which one claims to be rehabilitated. (*In re Gossage* (2000) 23 Cal.4th 1080, 1098.)

7. Clear and convincing evidence established that petitioner has been rehabilitated according to all the criteria of the California Code of Regulations, title 16, section 1360.2. Maintaining Kosin's probationary period any longer serves no public protection purpose and would only serve as punishment. This conclusion is based on all Factual Findings and Legal Conclusions.

ORDER

The petition of Mark Steven Kosins, M.D., Physician's and Surgeon's Certificate No. A 25406 is granted. Mark Steven Kosins, M.D.'s certificate shall be fully restored without conditions.

DATED: May 17, 2011

A handwritten signature in black ink, appearing to read 'ALVORD', is written over a horizontal line.

ALAN R. ALVORD
Administrative Law Judge
Office of Administrative Hearings